



CITY COUNCIL

AGENDA REQUEST

AGENDA OF:	08-03-10	AGENDA REQUEST NO:	V-A
INITIATED BY:	DAVID WORLEY, P.E. ASSISTANT PUBLIC WORKS DIRECTOR	RESPONSIBLE DEPARTMENT:	PUBLIC WORKS
PRESENTED BY:	KAREN DALY ASSISTANT CITY MANAGER	DEPARTMENT HEAD:	KAREN DALY ASSISTANT CITY MANAGER
		ADDITIONAL DEPARTMENT HEAD (S):	N/A
SUBJECT / PROCEEDING:	AUTHORIZE SUPPLY CONTRACT FOR ORNAMENTAL TRAFFIC SIGNAL POLE ASSEMBLIES		
EXHIBITS:	CONTRACT		
CLEARANCES		APPROVAL	
LEGAL:	AARON DOBBS <i>TAD</i> ASSISTANT CITY ATTORNEY	EXECUTIVE DIRECTOR:	N/A
PURCHASING:	TODD REED PURCHASING MANAGER <i>P</i>	ASST. CITY MANAGER:	KAREN DALY <i>Kd</i>
BUDGET:	JENNIFER BROWN, <i>JB</i> BUDGET & RESEARCH DIRECTOR	CITY MANAGER:	ALLEN BOGARD <i>Allen Bogard</i>
BUDGET			
EXPENDITURE REQUIRED: \$		500,000	
CURRENT BUDGET: \$		FUNDING IN VARIOUS CIP PROJECTS	
ADDITIONAL FUNDING: \$		N/A	
RECOMMENDED ACTION			
Authorize an ornamental traffic signal pole assemblies supply contract in a maximum amount of \$500,000 to KW Industries, Inc.			

EXECUTIVE SUMMARY

Several years ago, the City made a decision to install decorative traffic signals on all state routes. Later, the City Council would expand the use of the decorative upgrade on other arterials, i.e., University Boulevard, Dulles Avenue, etc. The decorative traffic signal hardware purchased has typically been from a sole source provider. The previous provider had a record of long back order times and it was increasingly difficult to replace damaged poles and bases in a timely fashion.

The City issued competitive sealed proposals. The purpose of this contract was to provide the City with a supply of poles and bases that would reduce the wait time when installing or replacing traffic signal hardware. The contract specifies that the quantities are estimates and the contract is structured as a unit price contract which enables the Public Works Department to utilize as few or as many of the bid services as the project budget allows. The contract is set up as a five-year agreement; the original term plus four options to renew.

On June 30, 2010, the City received one bid and that bidder was KW Industries, Inc. of Sugar Land.

This contract will enhance the Department's ability to respond in a reasonable timeframe by having a contractor with materials readily available.

The Public Works Department recommends the City Council award an Ornamental Traffic Signal Assemblies supply contract for one year with an option to renew for four more terms to KW Industries, Inc. in a maximum amount of \$500,000.

EXHIBITS

CITY OF SUGAR LAND
STANDARD CONTRACT FOR SUPPLIES
Over \$50K - Form Revised 3/24/10

I. General Information and Terms.

Supplier's Name and Address: KW Industries, Inc.
909 Industrial Boulevard
Sugar Land, Texas 77478

Description of Supplies: Traffic Signal Pole Assemblies

Maximum Contract Amount: \$500,000.00

Effective Date: On the latest date of the dates executed by both parties.

Termination Date: (See III C)

Renewal: The City may extend this Contract for four additional one-year terms on the same terms and conditions as provided for in the original term, by giving written notice of the extension to the other party at least 30 days prior to the termination date.

Contract Parts: This Contract consists of the following parts:

- I. General Information and Terms
- II. Signatures
- III. Standard Contractual Provisions
- IV. Additional Terms or Conditions
- V. Additional Contract Documents

II. Signatures. By signing below, the parties agree to the terms of this Contract:

CITY OF SUGAR LAND

SUPPLIER:

City Manager or Assistant City Manager

By: 

Date: _____

Date: 7-23-2010

Reviewed for Legal Compliance:



III. Standard Contractual Provisions.

A. Supplier's Supplies. The Supplier will provide to the City the supplies or materials described in this Contract under the terms and conditions of this Contract.

B. Billing and Payment. The City will pay the Supplier for the supplies provided for in this Contract with current revenues available to the City, but all the City's payments to the Supplier, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City is not liable to the Supplier for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

C. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

(a) On the termination date, if any, specified in the General Information in Part 1, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or

(b) If there is no termination date specified in the General Information in Part 1, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City's city manager may terminate this Contract during its term at any time for any reason by giving written notice to the Supplier not less than five business days prior to the termination date, but the City will pay the Supplier for all supplies provided in compliance with this Contract to the date of termination.

(3) If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution)

D. Liability and Indemnity. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.

E. Assignment. The Supplier may not assign this Contract without the City's prior written consent.

F. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.

G. Entire Contract. This Contract represents the entire Contract between the City and the Supplier and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

H. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the

parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

I. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, neither party will seek or be entitled to an award of attorney's fees or other costs relating to the suit.

J. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

K. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

L. Conflicting Provisions. If there is a conflict between a provision in the Supplier's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

IV. Additional Terms or Conditions.

A. If the City extends this contract for an additional one-year term, the then existing unit price for each item number containing steel or aluminum will increase or decrease in an amount equal to the sum of multiplying:

(1) the sum of the percentage of steel or aluminum in the item multiplied by the then existing unit price for the item; and

(2) the percentage of change, if any, between:

(a) the quarterly price index for steel or aluminum as published in the Engineering News Record and in effect on the 60th day prior to the beginning of the then existing one-year term; and

(b) the quarterly price index in effect on the 60th day prior to the termination date of the then existing term.

B. If an item number contains both steel and aluminum, the unit price for that item will increase or decrease in an amount determined by adding the increase or subtracting the decrease for steel to the increase or the decrease for aluminum.

C. If there is a conflict between this Provision IV (Additional Terms or Conditions) and a provision in a City's Additional Contract Document or a Supplier's Additional Contract Document, this provision controls.

V. Additional Contract Documents. The following documents attached to this Contract are part of this Contract:

A. Supplier's Additional Contract Documents:

1. KW Industries, Inc. Response to City of Sugar Land Request for Proposal No. 2010-32

(19 pages)

B. City's Additional Contract Documents:

1. City of Sugar Land Request for Proposal No. 2010-32 (23 pages)